

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:00cr57
	§	
DAVID WAYNE MCCLOY	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on December 4, 2012, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Jennifer Bray.

On January 22, 2001, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 45 months imprisonment followed by a three-year term of supervised release for the offense of felon in possession of stolen mail. Defendant began his term of supervision on October 23, 2009.

On February 27, 2012, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 31). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release; and (3) Defendant

shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with all financial obligations imposed by the judgment.

The Petition alleges that Defendant committed the following violations: (1) On July 25, 2011, Defendant was arrested by the Texarkana Police Department for burglary of a building. On August 26, 2011, Defendant entered a plea of guilty for the offense and was sentenced to 16 months in a state jail facility; (2) On October 26, 2009, Defendant was instructed to pay at least 10% of his total income each month toward restitution. Defendant's last payment at this rate was in December 2010; On May 13, 2011, Defendant was reprimanded for the violation and agreed to begin making payments of \$50.00 per month toward restitution, beginning in June 2011. Defendant failed to make a payment as agreed in June and July 2011. Defendant is in default with respect to the Court-imposed restitution, with an unpaid balance of \$2,761.61; and (3) According to a Credit Bureau Check conducted on May 2, 2011, Defendant established new lines of credit with Security Finance in November 2010, and with HSBC Bank, Capital One, and Security Finance in December 2010. The total amount of credit established is \$920.00

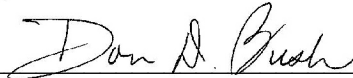
At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the December 4, 2012 hearing, the Court recommends that Defendant be committed to

the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with fifteen (15) months supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Texarkana, if appropriate.

SIGNED this 6th day of December, 2012.

A handwritten signature in cursive script, reading "Don D. Bush", is written over a horizontal line.

DON D. BUSH
UNITED STATES MAGISTRATE JUDGE